



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 18, 1995

Ms. Alesia L. Sanchez
Legal Assistant
Legal and Compliance, MC110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR95-183

Dear Ms. Sanchez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32443.

The Texas Department of Insurance (the "department") received a request for information concerning Jimmie Lee Hudson and William C. Cook. You say some of the information will be released. However, the department seeks to withhold from required public disclosure some of the requested information based on sections 552.103 and 552.111 of the Government Code. You submitted representative samples of the requested information.

Section 552.103(a) applies to information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). You assert that the requested "information relates to an ongoing investigation of Jimmie Lee Hudson for alleged violations of state insurance laws. It is reasonably anticipated that this investigation may culminate in an administrative contested case with the person as a party. The attorney responsible for reviewing this matter has determined that the requested information is directly related to anticipated litigation."

However, the information you enclosed does not support your assertion that litigation that relates to the requested information is reasonably anticipated. The information you enclosed includes a department document titled "Request for Disposition," dated February 15, 1995. This document indicates that the department does not intend to initiate an administrative contested case. Moreover, the information you enclosed includes no other information that would support your assertion that the department reasonably anticipates initiating a contested case against Mr. Cook. Therefore, we do not believe that litigation to which the department will be a party is reasonably anticipated. Accordingly, the department may not withhold the requested information based on section 552.103 of the Government Code.

Section 552.111 of the Government Code excepts from required public disclosure:

An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

This exception applies to a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. See Open Records Decision No. 615 (1993). This exception does not except from disclosure purely factual information. In addition, section 552.111 may apply to information created for a governmental body by an outside consultant when the outside consultant is acting at the request of the governmental body and performing a task within the authority of the governmental body. Open Records Decision No. 631 (1995).

We agree that portions of the requested information consist of advice, recommendations, and opinions reflecting the department's policymaking process. The department may withhold these portions from required public disclosure based on section 552.111 of the Government Code. In addition, the requested information contains some information created for the department by the Department of Public Safety ("DPS"). We believe DPS was acting at the department's request and performing a task within the department's authority. Thus, we believe that portions of the information created by DPS are excepted from required public disclosure under section 552.111. We have marked the documents accordingly.

Finally, we have marked a small portion of private financial information that the department must withhold based on section 552.101 of the Government Code in conjunction with the common-law right to privacy. *See* Open Records Decision No. 545 (1990). Section 552.101 excepts from required public disclosure information that is confidential by law.¹ This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.* Because we believe there is no legitimate public interest in the financial information at issue, the department must withhold it pursuant to section 552.101 and the common-law right to privacy.

In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Government Section

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¹Because the Open Records Act prohibits the release of confidential information and because its improper release constitutes a misdemeanor, the attorney general will raise section 552.101 on behalf of a governmental body. *See* Open Records Decision No. 455 (1987).

Ref.: ID# 32443

Enclosures: Marked documents

cc: Ms. Denise McVea
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(w/o enclosures)